

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

**South Carolina Department of Social
Services, South Carolina Judicial
Department, and County Clerks of
Court**

v.

**Hewlett-Packard Company and Hewlett
Packard State and Local Enterprise
Services, Inc.**

**Child Support Enforcement System and
Family Court Case Management System
Contract No. 07-S7279**

**BEFORE THE CHIEF PROCUREMENT
OFFICER FOR CONSTRUCTION**

Case Nos. 2013-204A

**CONSENT ORDER OF DISMISSAL AND
SETTLEMENT APPROVAL
DETERMINATION**

POSTING DATE: *20 January 2015*

This matter came before the Chief Procurement Officer for Information Technology Management ("CPOITM") pursuant to requests from the South Carolina Department of Social Services ("DSS"), South Carolina Judicial Department, and County Clerks of Court (collectively the "Agencies") and Hewlett-Packard Company and its subsidiary Hewlett Packard State and Local Enterprise Services, Inc. (HPSLES) (collectively "HP") for administrative review and resolution of contract controversies between them regarding a contract for development of child support enforcement and family court case management software pursuant to S.C. Code Ann. § 11-35-4230. Pursuant to S.C. Code Ann. § 11-35-840, the CPOITMO delegated this matter to the Chief Procurement Officer for construction (hereinafter "CPO").

Pursuant to S.C. Code Ann. § 11-35-4230(3), the Agencies and HP (collectively the "Parties"), now seek approval of a settlement of the contract controversies between them,

reached by mutual agreement. The Agencies and HP have each requested approval of their proposed settlement and dismissal of all claims with prejudice.

BACKGROUND AND BASIS FOR THE REQUEST

In August 2007, HP's predecessor-in-interest entered into a contract with the Agencies for the development of child support enforcement and family court case management systems including custom software, hardware, network, implementation and other system development goods and services (the "CFS Project Contract" or the "Contract"). HP became a party to the Contract in August 2008, which was subsequently amended several times by mutual agreement. During this time, the development of the child support enforcement and family court case management software was delayed from the originally contemplated timeframe, and the Parties disagreed as to which party bore responsibility for the delay and what their respective payment obligations were to one another.

On or about October 15, 2012, the Agencies filed a Request for Resolution of a Contract Controversy with the CPO, asserting, among other things, that HP had materially breached the Contract and seeking damages and other relief. In response, HP denied the State's claims and asserted its own counterclaims, asserting, among other things, that the Agencies had breached payment obligations to HP. Before the hearing on the October 2012 Contract Controversy was scheduled to begin, the Agencies terminated the Contract by letter dated July 10, 2013. The Parties then agreed to a continuance, and the hearing was rescheduled to begin October 21, 2013.

Thereafter, in August 2013, the Agencies filed an Amended Request for Resolution of a Contract Controversy, and HP filed a Request for Resolution of a Contract Controversy. The CPO proceeded with the administrative review hearing on October 21, 2013. The CPO

received exhibits and heard the testimony of the Parties' witnesses during 47 days of trial between October 21, 2013, and February 25, 2014, when the Parties concluded their presentation of witnesses. Prior to the conclusion of the hearing by closing argument, the Parties requested and the CPO granted, a continuance to allow for a mediation process.

On September 29, 2014, the Parties notified the CPO that they had reached an agreement in principle, but required additional time to finalize and execute the documents. The Parties finalized the settlement documents and submitted the proposed settlement to the CPO for his approval on January 20, 2015. As part of the proposed settlement, the Agencies have agreed to withdraw their July 10, 2013 termination letter, and the Parties have each agreed to dismiss with prejudice all claims asserted against each other in their contract controversies. Further, the Parties agreed to assign the CFS Project Contract to Xerox State and Local Solutions, Inc. ("Xerox"), Xerox and the Agencies agree to amend the CFS Project Contract, and HPSLES and DSS entered into a Time and Materials Assistance Agreement, all as part of the settlement.

DETERMINATION

The settlement terms are set forth in a document entitled "Settlement Agreement and Mutual Release of Claims" (hereinafter, "the Settlement Agreement"). The Settlement Agreement is now before me for consideration. The Settlement Agreement provides in part:

The Parties agree and acknowledge that this Settlement Agreement is the result of a compromise of doubtful and disputed claims and is being entered into only for the purpose of avoiding the burdens, inconveniences and expenses of litigation and shall never at any time for any purpose be construed as an admission by any Party of any liability or responsibility to another, or to be an admission or concession as to the merits of any claim asserted by any Party. Nothing herein shall in any way limit the use of this Settlement Agreement as evidence in a proceeding to enforce any or all of the terms hereof.

Moreover, the Settlement Agreement states that “[e]ach Party to this Settlement Agreement has been represented by counsel in preparing and negotiating this Settlement Agreement.”

As reflected in the Settlement Agreement, the Parties have consulted with legal counsel regarding the terms and conditions of the Settlement Agreement. In addition, the Agencies have provided the CPO with the representations of their legal counsel that the Settlement Agreement is a valid and binding obligation of the Agencies, enforceable against Agencies in accordance with its terms. Likewise, HP has provided the CPO with certification of the executing agents’ authority to bind HP to the Settlement Agreement. Recognizing that the Parties have reached a mutual agreement with the advice of counsel, the CPO’s approval is not a comment upon the merits of the underlying dispute or the terms of the settlement.

The Parties also presented three other documents as part of the settlement. The CPO received and reviewed: (1) an Assignment Agreement assigning the Amended CFS Project Contract from HPSLES to Xerox; (2) a Time and Materials Assistance Agreement between HPSLES and DSS; and (3) Amendment/Record of Negotiations 7 to the CFS Project Contract between the Agencies and Xerox. In addition to reviewing these documents as part of the settlement, the Agencies, desiring that the settlement and documents presented be approved using an exemption from the purchasing procedures of the Procurement Code granted by the Budget and Control Board to DSS for the Child Support Enforcement System (“CSES”) and the Statewide Disbursement Unit (“SDU”), requested that the CPO review the exemption and determine if it remained in force. The CPO received the opinion of Agencies’ counsel that the exemption remains in force.

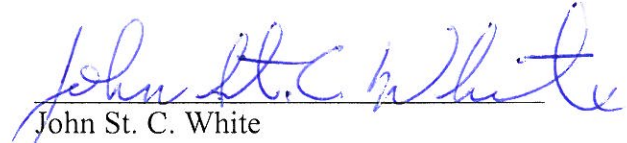
Upon review of all materials, arguments and opinions presented by the Parties, the CPO determines that the procurement exemption adopted by the Budget and Control Board on September 17, 2001 remains in effect and applies to the settlement and the documents presented to the extent they require an exemption from the purchasing procedures of the Procurement Code. The CPO also determines that the Settlement Agreement, Assignment Agreement, Time and Materials Services Agreement and Amendment/Record of Negotiations 7 to the CFS Project Contract are approved as part of the mutual settlement between the Parties and according to the exemption.

ACCORDINGLY, pursuant to § 11-35-4230(3), the settlement reached by mutual agreement of the parties is approved; and

FURTHER, the Agencies' July 10, 2013 termination letter is withdrawn; and

FURTHER, pursuant to the terms of the Settlement Agreement, the respective claims of the Parties pending before the CPO are dismissed with prejudice.

AND IT IS SO ORDERED.


John St. C. White
Acting Chief Procurement Officer for
Information Technology

Columbia, South Carolina


January 20, 2015

WE SO MOVE AND CONSENT:



Marcus A. Manos
NEXSEN PRUET, LLC
1230 Main Street, 7th Floor
Post Office Drawer 2426
Columbia, South Carolina 29202
(803) 771-8900
mmanos@nexsenpruet.com

Counsel for the Agencies



David E. Dukes
NELSON MULLINS RILEY & SCARBOROUGH, LLP
1320 Main Street, 17th Floor
Post Office Box 11070
Columbia, South Carolina 29211
(803) 799-2000
David.dukes@nelsonmullins.com

Counsel for HP